

# MORGANTOWN PLANNING COMMISSION

## MINUTES

**6:30 PM**

**September 13, 2012**

**COUNCIL CHAMBERS**

**MEMBERS PRESENT:** Peter DeMasters, Ken Martis, Carol Pyles, Jennifer Selin, Mike Shuman, Tim Stranko, William Wyant

**MEMBERS ABSENT:** Sam Loretta, Bill Petros

**STAFF:** Christopher Fletcher, AICP

**I. CALL TO ORDER/ROLL CALL:** DeMasters called the meeting to order at 6:30 PM.

DeMasters read the standard explanation of the how the Planning Commission conducts business and rules for public comments.

**II. GENERAL PUBLIC COMMENTS:** None

**III. MATTERS OF BUSINESS:**

**A.** Approval of the August 23, 2012 minutes. Fletcher advised the Commission that the August 23, 2012 minutes would be included on the October agenda.

**IV. OLD BUSINESS:** None.

**V. NEW BUSINESS:**

**A. RZ12-04 / Morgantown Engineering and Construction, Inc. / 101 Fourth Street:** Request by Lisa Mardis of Project Management Services, on behalf of Morgantown Engineering and Construction, Inc., for a Zoning Map Amendment from R-3, Multi-Family Residential District to B-2, Service Business District and to remove the SSOD, South Sunnyside Overlay District from realty addressed as 101 Fourth Street; Tax Map 19, Parcels 7 and 8.

Fletcher advised the Commission that the petitioner requested this petition to be placed on the October agenda.

**B. RZ12-05 / Wiley & Giuliani / 408, 460, 488, 491, & 500 Forest Ave:** Request by John F. Wiley and James Giuliani for a Zoning Map Amendment from the R-1A, Single-Family Residential District to R-2, Single- and Two-Family Residential at 408, 460, 488, 491, & 500 Forest Avenue; Tax Map 29, Parcels 121, 123, 124, 125, 125.1, 126.

Fletcher read the Staff report, stating that the petitioner seeks to reclassify six (6) tracts of realty that includes Parcels 121,123,124, 125, 125.1, and 126 of Tax Map 29 from the R-1A, Single

Family Residential District to the R-2, Single and Two-Family Residential District. Addendum A of this report illustrates the location of the subject realty.

Staff understands that Mr. Wiley owns and/or controls Parcels 125, 125.1, and 126 and that Mr. Giuliani owns and/or controls Parcels 121, 123, and 124. Mr. Wiley inadvertently included Parcels 72.1 and 81 on his respective zoning map amendment application; the zoning classification for which is already R-2.

The following description summarizes the existing conditions of the petitioners' six (6) respective parcels included on the subject zoning map amendment petition:

- Parcels 121, 124, and 126 contain registered residential rental units.
- Parcels 123, 125, and 125.1 are vacant undeveloped tracts.
- Those parcels south of Forest Avenue have very steep slopes with an elevation change of approximately 80 feet downward from Forest Avenue to the general location of the respective rear parcel boundaries.
- The boundary between the R-1A and R-2 Districts splits Parcel 123. Staff has no working knowledge as to why the subject zoning district edge did not follow road centerlines or parcel boundaries as is customarily drawn.
- The total area of the six (6) parcels is approximately 70,725 square feet or 1.6 acres.

Because the R-2, Single- and Two-Family Residential District adjoins the petitioners' respective properties, the requested zoning map amendment is considered a zoning district boundary adjustment.

Fletcher explained the illustration included in the Staff Report of a portion of Map LU-2 of the 1999 Comprehensive Plan noting that the planned use for the subject properties was "Single-Family Residential."

According to Article 1335.01, the purpose of the R-1A District is to:

- (A) Provide for single family neighborhoods on smaller lots, located within convenient walking distance of other uses, and
- (B) Preserve the desirable character of existing single family neighborhoods, and
- (C) Protect the single family residential areas from change and intrusion that may cause deterioration, and
- (D) Provide for adequate light, ventilation, quiet, and privacy for neighborhood residents.

According to Article 1337.01, the purpose of the R-2 District is to:

- (A) Provide for two-family housing development and customary accessory uses at density slightly higher than in single family neighborhoods, and
- (B) Preserve a the desirable character of existing medium density family neighborhoods, and
- (C) Protect the medium density residential areas from change and intrusion that may cause deterioration, and
- (D) Provide for adequate light, ventilation, quiet, and privacy for neighborhood residents.

West Virginia State Code §8A-7-8 provides that if a zoning amendment is inconsistent with the adopted Comprehensive Plan, then City Council, with the advice of the Planning Commission, must find that there have been major changes of an economic, physical or social nature within the area involved which were not anticipated when the comprehensive plan was adopted and that those changes have substantially altered the basic characteristics of the area.

The following points are noted changes that appear to have significantly influenced the economic, physical, and social character of the petitioners' subject properties and the area along Forest Avenue since the adoption of the 1999 Comprehensive Plan Update.

- The tenancy of the dwelling units included in the petitioners' properties has changed from owner-occupancy to rental-occupancy.
- Once a residential dwelling is converted from ownership to investment property, particularly within areas of high rental concentrations, it is very difficult for that unit to become owner-occupied again due to how its value is viewed by the market and the lending community.
- Market interest in owner-tenancy and/or further development of single-family dwellings along Forest Avenue appears to have been significantly diminished due to:
  - The extent of tenancy conversion of dwelling units and recent construction and contemplated development along Forest Avenue beginning at Spruce Street to its terminus at the petitioners' respective properties.
  - The physical and social isolation of the petitioners' respective properties given its location at the end of a very narrow dead-end street accessed through and surrounded by a high concentration of college-aged residents and associated rental properties.
- Potential property assembly opportunities along Forest Avenue under the R-2 zoning classification may provide economic interest and opportunities to redevelop functionally obsolete existing and planned single-family residential uses.

Zoning map amendment requests should be evaluated on their land-use merits alone. The petitioners' development intentions are extraneous and the Commission should consider the request on its merits as a land-use decision. In conducting such an analysis, the Commission should determine if the R-2, Single- and Two-Family Residential District is the appropriate zoning classification for the subject realty, weighing all possible future development and land use scenarios as permitted by the Planning and Zoning Code; particularly, Article 1337 "R-2, Single- and Two-Family Residential District" and Table 1331.05.01 "Permitted Land Uses".

DeMasters recognized co-petitioner John Wiley, who held up several maps, explained the layout of the lots, and expounded on the history of the area.

DeMasters recognized co-petitioner James Giuliani, who stated that he has been a property owner in this area for many years, and that he feels this is a "clean-up" of an area in which the zoning no longer applies to what is now almost 100% student rental dwellings. He stated that he has worked hard, and is still working, to enhance the area.

There being no questions by the Commission, DeMasters opened the public hearing asking if anyone was present to speak in favor of the petition.

DeMasters recognized Frank Ferrell, 1309 Dorsey Avenue, who spoke in favor of the request. He stated that he has owned property in the area for 35 years, and prior to that, was owned by his uncle. He stated that he had been involved in City government for 11 years, attending about 90% of the City Council meetings and serving on the BZA for six years. He talked about the history of zoning in the area and agreed that it needs to be rezoned.

Selin asked Ferrell if his house was currently a rental. He answered that it is registered as a rental, but no one lives there currently, although he keeps the utilities on and maintains it.

There being no further public comments in favor of the petition, DeMasters asked if anyone was present to speak in opposition to the request. There being none, DeMasters declared the public hearing closed and asked for Staff recommendations.

Fletcher read a letter from Philip Shuman for the record, dated Sept 10, 2012. He stated that he owns property adjacent and contiguous to the parcels that are up for rezoning. He further stated that he fully supports the request for rezoning.

Fletcher read the Staff Report stating that the Planning Division advises the Planning Commission to determine that there have been economic, physical, and social changes, as described in this Staff Report, within the area involved that do not appear to have been anticipated when the 1999 Comprehensive Plan Update was adopted and that those changes have substantially altered the basic characteristics of the area.

The Planning Division advises the Planning Commission to forward a recommendation to City Council to approve zoning map amendment petition RZ12-05 so that Parcels 121,123,124, 125, 125.1, and 126 of Tax Map 29 are reclassified from the R-1A, Single Family Residential District to the R-2, Single and Two-Family Residential District.

Selin asked Fletcher to confirm that there have been no objections stated in regards to this request. Fletcher answered that there have not.

Stranko moved to forward a recommendation to City Council to approve zoning map amendment petition RZ12-05 so that Parcels 121,123,124, 125, 125.1, and 126 of Tax Map 29 are reclassified from the R-1A, Single Family Residential District to the R-2, Single and Two-Family Residential District; seconded by Shuman. Motion carried unanimously.

- C. S12-08-II / Westminster House, Inc. / former Central School:** Request by Chet Parsons, on behalf of Westminster House, Inc., for a temporary parking use at the former Central School site located off Wiley Street and Baird Street; Tax Map 26, Parcels 263 & 270; PUD, Planned Unit Development District.

Fletcher read the Staff report, stating that the petitioner seeks to the petitioner seeks approval for a temporary use on the former Central School site to provide parking spaces leased to the general public. The site is currently used for leased parking. However, the petitioner's Planned Unit Development, under which the temporary parking was approved, is scheduled to be rescinded by recommendation by the Planning Commission on August 23, 2012. Continued leased parking must therefore be approved as a temporary use as set forth in Article 1331.07(B)(3) of the Planning and Zoning Code. Addendum A of this report illustrates the location of the subject property.

The zoning classifications for the subject property upon City Council's enactment rescinding the related Planned Unit Development (PUD) will be R-2, Single- and Two-Family Residential District and B-2, Service Business District.

Attached hereto is Article 1331.07 "Temporary Uses", which provides the following related guidance:

1331.07(B)(2)..... Temporary Uses shall be subject to all the regulations of the applicable [zoning] district in which they are located.

STAFF COMMENTARY..... *A "Private Parking Lot" use is permitted as a conditional use in the R-2 District and a "Commercial Parking Lot" use is permitted by-right in the B-2 District. It is the opinion of the Planning Division that the only difference between the two parking lot uses, as defined in Article 1329.02 of the Planning and Zoning Code, is that commercial parking lots appear to be intended as stand-alone uses of its respective parcel(s).*

1331.07(B)(3)..... Temporary Use permit applications shall be categorized as Type II Site Plan Submissions and shall require a public hearing before the Planning Commission.

STAFF COMMENTARY..... *Although this provision classifies temporary use permits as Type II Site Plan submissions, which are customarily reviewed and approved by Staff, this provision requires approval by the Planning Commission. Staff has no working knowledge as to why Article 1331.07 contains several discrepancies concerning the review authority and approval process of temporary use permits. Given the Planning Commission's past concern during the related PUD amendment process relating the duration of the petitioner's temporary parking, it appears prudent that the Planning Commission consider the petitioner's present temporary parking use.*

1331.07(C)(5)..... Other similar uses deemed temporary by the Planning Commission and attached with such time period, conditions, and safeguards as the Board may deem necessary.

STAFF COMMENTARY..... *Parking uses are not specifically identified in Article 1331.07(C) as a temporary use nor does there appear to be sufficient guidance of a similar temporary use in determining acceptable duration. As such, it appears that duration in this instance is left to the objective judgment of the Planning Commission. The petitioner has requested the duration to last through the end of the 2012-2013 school year, which staff understand to mean the West Virginia University academic calendar ending May 19, 2013.*

1331.07(D)(5)..... The lot shall be put in clean condition devoid of temporary use remnants upon termination of the temporary period.

*STAFF COMMENTARY..... In reviewing the petitioner's present temporary use petition, the Commission should consider including a related condition.*

DeMasters recognized the petitioner Chet Parsons, who stated that he has had a long history with the Planning Commission and is well aware of Commissioner Stranko's concern the last time he came before the Planning Commission to ask for a continuation of a temporary use permit. He stated that he is very hopeful that this is the last time this request will have to be made. He said they hope to break ground by the time the calendar school year ends and they would like to continue parking until then.

There being no questions by the Commission, DeMasters opened the public hearing asking if anyone was present to speak in favor of the request.

DeMasters recognized James Guilian, Prairie Avenue, who stated that he was in favor of the request since it is temporary. He stated that the parking is greatly needed in that area.

There being no further public comments in favor of the petition, DeMasters asked if anyone was present to speak in opposition to the request. There being none, DeMasters declared the public hearing closed and asked for Staff recommendations.

Fletcher read Staff recommendation stating that Staff recommends approval of temporary use permit S12-0-II with the following conditions:

1. That the duration of the temporary parking use shall end on Sunday, May 19, 2013; and,
2. That, and provided a site plan for the redevelopment of the subject realty is not approved by June 30, 2013, no later than June 30, 2013, all surface premises used for the subject temporary parking use approved herein shall be put in a clean condition devoid of the temporary parking use; shall be covered in topsoil and seeded to the satisfaction of the Chief Building Code Official to help mitigate standing water or erosion; and, driveway entrances shall be blocked to the satisfaction of the City Engineer to restrict vehicular access thereby ensuring the discontinuance of the temporary parking use and mitigate potential property damage resulting from errant vehicular entry.

Stranko stated that he supports this project and commended them for their efforts to keep pursuing money for this project.

Stranko made a motion to approve temporary use petition S12-08-II with Staff recommended conditions, seconded by Martis. Motion carried unanimously.

- D. MNS12-14 / Friend Rentals, LLC / 146 Third Street:** Request by Lisa Mardis of Project Management Services, on behalf of Friend Rentals, LLC, for minor subdivision approval of property located 146 Third Street; Tax Map 20, Parcels 47 and 48; R-3, Multi-Family Residential District.

Fletcher read the Staff report stating that the petitioner seeks to the petitioner seeks to combine two (2) existing parcels for the development of a multi-family structure. Addendum A of this report illustrates the location of the subject property.

The combined area of the two existing parcels is approximately 2,700 square feet. The minimum lot size standard in the R-3 District is 4,000 square feet as provided in Article 1339.03(A) of the Planning and Zoning Code.

Staff understands that the petitioner may be negotiating the acquisition of an additional contiguous parcel for further property assembly. If accomplished, the larger tract would exceed 4,000 square feet. This is simply offered for informational purposes and should not be considered as obligatory for the petitioner's present minor subdivision petition.

Specifically, Parcels 47 and 48 are considering pre-existing nonconforming parcels due to their boundary configurations and corresponding areas. As such, it is the opinion of the Planning Division that subdivision variance approval by the Planning Commission under Article 1315.07 is not required to combine Parcels 47 and 48 for redevelopment as presently contemplated.

Fletcher stated that Staff is representing petitioner for this request. He stated that he does not believe variance approval will be necessary. It is essentially taking two non-conforming lots to form one, less non-conforming lot. He stated that he understands that the property owner is seeking to purchase another piece of property contiguous to the subject property, which would exceed the minimum 4,000 square foot standard.

There being no questions by the Commission, DeMasters opened the public hearing portion asking if anyone was present to speak in favor of or in opposition to the petition. There being none, DeMasters declared the public hearing closed and asked for Staff recommendations.

Fletcher read Staff recommendation stating that Staff recommends approval with the following conditions:

1. That the petitioner submit three (3) original final plat documents signed and sealed by a surveyor licensed in the State of West Virginia for the Planning Commission President's signature; and,
2. That the final plat is filed at the Monongalia County Courthouse within thirty (30) days of meeting the condition set forth above.

Selin made a motion to approve minor subdivision petition MNS12-14 with Staff recommended conditions; seconded by Stranko. Motion carried unanimously.

- E. MNS12-15 / Tera, LLC / Protzman Street and Glenn Street:** Request by Lisa Mardis of Project Management Services, on behalf of Tera, LLC, for minor subdivision approval of property located at the corner of Protzman Street and Glenn Street; Tax Map 20, Parcels 452 and 453; R-2, Single- and Two-Family Residential District.

Fletcher advised the Commission that the petitioner requested this petition to be placed on a future agenda.

- F. **MNS12-16 / Tera, LLC / Protzman Street:** Request by Lisa Mardis of Project Management Services, on behalf of Tera, LLC, for minor subdivision approval of property located along Protzman Street; Tax Map 20, Parcels 454, 457, and 458; R-2, Single- and Two-Family Residential District.

Fletcher advised the Commission that the petitioner requested this petition to be placed on a future agenda.

- G. **MNS12-17 / Tera, LLC / Protzman Street and Glenn Street:** Request by Lisa Mardis of Project Management Services, on behalf of Tera, LLC, for minor subdivision approval of property located at the corner of Protzman Street and Glenn Street; Tax Map 20, Parcels 445, 446, and 447; R-2, Single- and Two-Family Residential District.

Fletcher read the Staff report stating that the petitioner seeks to combine three (3) existing parcels for the development of a multi-family structure. Addendum A of this report illustrates the location of the subject property.

The combined area of the three (3) existing parcels will be approximately 16,200 square feet, which exceeds the R-2 District minimum lot area standard of 5,000 square feet. The combined property will have approximately 90 feet of frontage on Glenn Street, which exceeds the R-2 District minimum lot frontage standard of 40 feet as provided in Article 1337.03(A)

Fletcher stated that Staff is representing the petitioner.

There being no questions by the Commission, DeMasters opened the public hearing asking if anyone was present to speak in favor of or in opposition to the request. There being none, DeMasters declared the public hearing closed and asked for Staff recommendations.

Fletcher read Staff recommendation stating that Staff recommends approval with the following conditions:

1. That the petitioner submit three (3) original final plat documents signed and sealed by a surveyor licensed in the State of West Virginia for the Planning Commission President's signature; and,
2. That the final plat is filed at the Monongalia County Courthouse within thirty (30) days of meeting the condition set forth above.

Stranko made a motion to approve minor subdivision petition MNS12-17 with Staff recommended conditions; seconded by Wyant. Motion carried unanimously.



**H. MNS12-18 / Spruce Street United Methodist Church / 386 Spruce Street:**  
Request by Paul Hanko, on behalf of the Spruce Street United Methodist Church as Chairperson of the Board of Trustees, for minor subdivision approval of property located at 386 Spruce Street; Tax Map 29, Parcel 39; B-4, General Business District.

Fletcher read the Staff report stating that in 2009, the petitioner reconfigured the boundaries of six (6) parcels so that four (4) parcels remained (MNS09-19). The purpose of the subdivision was to bring the lot configuration into conformity with related Planning and Zoning Code provisions as a result of a facility expansion project as well as to provide for an eighteen (18) foot wide right-of-way easement.

Currently, the petitioner seeks to adjust the parcel boundary separating Parcel "B" and Parcel "D" as illustrated on the petitioner's submitted drawing. The adjustment relocates said boundary twenty-five feet in a southeasterly but perpendicular direction resulting in an increase in lot area for Parcel "B" from approximately 12,651 square feet to approximately 14,839 square feet. The area of Parcel "D" will likewise be reduced from approximately 19,802 square feet to approximately 17,614 square feet.

In addition to the parcel boundary adjustment, the petitioner seeks to provide a twelve-foot right-of-way access easement that tracks the directional traffic ingress and egress patterns of the parking lot on Parcel "B".

Fletcher stated that parcel D includes three structures behind the church that the church owns. When the property was re-subdivided in 2009, the property marked in purple was land-locked. A right-of-way easement was required. An 18 ft. access easement was provided. They are hoping to sell parcel D, and the way the parking lot is currently configured, there is no room to make the turn and be able to go back out onto Spruce Street. Thus, the reason for moving the line is to provide room to make the turn and then out onto the street.

There being no questions by the Commission, DeMasters opened the public hearing asking if anyone was present to speak in favor of or in opposition to the request. There being none, DeMasters declared the public hearing closed and asked for Staff recommendations.

Fletcher read Staff recommendation stating that Staff recommends approval with the following conditions:

1. That the petitioner submit three (3) original final plat documents, including all access/utility easements, signed and sealed by a surveyor licensed in the State of West Virginia for the Planning Commission President's signature; and,
2. That the final plat is filed at the Monongalia County Courthouse within thirty (30) days of meeting the condition set forth above.

Stranko made a motion to approve minor subdivision petition MNS12-18 with Staff recommended conditions; seconded by Pyles. Motion carried unanimously.

**VI. OTHER BUSINESS:**

**A. Committee Reports**

- Traffic Commission: No report.
- Green Team: No report.

**B. Staff Comments:** Fletcher advised the Commission that the fourth Comprehensive Plan Steering Committee was scheduled for Monday, September 24, 2012 from 6:00 PM to 8:00 PM at the Morgantown Municipal Airport Administration Building in the basement conference room. Fletcher stated that ACP Visioning + Planning representatives would be providing a briefing to City Council during the September 25, 2012 Committee of the Whole meeting.

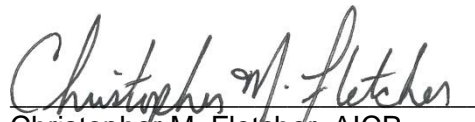
**VII. FOR THE GOOD OF THE COMMISSION – None.**

**VIII. ADJOURNMENT: 7:35 PM**

MINUTES APPROVED:

November 8, 2012

COMMISSION SECRETARY:

  
Christopher M. Fletcher, AICP